

AMENDED IN ASSEMBLY APRIL 19, 2016

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1828

Introduced by Assembly Member Dodd

February 9, 2016

An act to amend Section 15626 of the Government Code, relating to the State Board of Equalization.

LEGISLATIVE COUNSEL'S DIGEST

AB 1828, as amended, Dodd. State Board of Equalization: members: conflicts of interest.

The Quentin L. Kopp Conflict of Interest Act of 1990 requires a member of the State Board of Equalization who has received a contribution or contributions within the preceding 12 months in an aggregate amount of \$250 or more from a party or his or her agent, or from any participant or his or her agent, to, prior to rendering any decision in any adjudicatory proceeding pending before board, disclose that fact on the record of the proceeding. A member is prohibited from making, participating in making, or in any way attempting to use his or her official position to influence, the decision in an adjudicatory proceeding pending before the board if the member knows or has reason to know that he or she received a contribution or contributions in an aggregate amount of \$250 or more from a party to the proceeding, or from a participant in the proceeding the member knows or has reason to know has a financial interest in the decision. The act also requires a party to, or a participant in, an adjudicatory proceeding pending before the board to disclose on the record of the proceeding any contribution

or contributions in an aggregate amount of \$250 or more made within the preceding 12 months by the party or participant, or his or her agent, to any member of the board. A person who knowingly or willfully violates any provision of the act is guilty of a misdemeanor.

This bill would delete the \$250 limitation and instead apply the above-described disclosure and disqualification provisions if a board member receives any contribution from a party, participant, or agent, as provided. The bill would also prohibit a board member from requesting, suggesting, or accepting a contribution from a party, participant, or agent within the 12 months subsequent to a decision in the adjudicatory proceeding before the board in which the party or participant is involved, *and in which the member made, participated in making, or in any way attempted to use his or her official position to influence the decision*, except as provided. The bill would also require a party, participant, or agent that makes a contribution within 12 months subsequent to a decision in an adjudicatory proceeding in which the party or participant is ~~involved~~ *involved, and in which the member made, participated in making, or in any way attempted to use his or her official position to influence the decision*, to disclose to the board contributions to a member within 30 days. The bill would require the board to make all disclosures required by these provisions publicly available on its Internet Web site. The bill would also expand the definition of the term “contribution” to include certain payments that are at least \$5,000 in aggregate made at the behest of a member of the board. The bill would make various findings and ~~declaration~~ *declarations*.

By expanding the application of the criminal sanctions of the Quentin L. Kopp Conflict of Interest Act of 1990, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The State Board of Equalization (the board) is a
4 constitutionally authorized quasi-judicial body consisting of five
5 voting members, including the Controller and four members
6 representing four equalization districts and elected to four-year
7 terms at gubernatorial elections. The board is the only elected tax
8 commission in the United States.

9 (b) The board is entrusted by statute to administer more than
10 30 tax and fee programs that generate state revenue. The board is
11 also charged with public utility property tax assessments and
12 overseeing the property tax assessment practices of the state's 58
13 county assessors.

14 (c) Additionally, the board hears appeals from various business
15 tax assessments and Franchise Tax Board actions.

16 (d) Board members are subject to the Political Reform Act of
17 1974 (Title 9 (commencing with Section 81000) of the Government
18 Code) and rules of the Fair Political Practices Commission
19 applicable to all other state elected officials.

20 (e) As a quasi-judicial body, the board is also subject to strict
21 contribution limits under the Quentin L. Kopp Conflict of Interest
22 Act of 1990 (Section 15626 of the Government Code) (the Kopp
23 Act). The Kopp Act recognizes the unique positions of board
24 members as both elected officials and judges presiding over tax
25 appeals. The Kopp Act is intended to prevent a board member
26 from creating conflicts of interest by participating in making or
27 influencing a decision of the board if the member has accepted a
28 contribution in excess of two hundred fifty dollars (\$250) from a
29 party to an appeal or his or her agent, or a participant or his or her
30 agent, within the 12 months preceding the appeal.

31 (f) The strict contribution limits of the Kopp Act do not apply
32 to payments made at the behest of a board candidate or committee
33 when the payment is made for purposes unrelated to his or her
34 candidacy for elected office.

35 (g) Despite passage of the Kopp Act in 1990, a loophole
36 allowing parties before the board, as well as parties' agents, to
37 aggregate multiple contributions that individually fall below the
38 two hundred fifty dollar (\$250) limit but together exceed two

1 hundred fifty dollars (\$250) creates a perceived conflict of interest
2 when the board hears the parties' appeals. Similarly, payments
3 made at the behest of a board member by parties with an
4 approaching appeal before the board create a perceived conflict
5 of interest.

6 (h) By enactment of this act, it is the intent of the Legislature
7 to eliminate the perceived conflicts of interest associated with
8 contributions and behested payments by parties, participants, and
9 their agents related to appeals before the board.

10 SEC. 2. Section 15626 of the Government Code is amended
11 to read:

12 15626. (a) This section shall be known, and may be cited, as
13 the Quentin L. Kopp Conflict of Interest Act of 1990.

14 (b) Prior to rendering any decision in any adjudicatory
15 proceeding pending before the State Board of Equalization, each
16 member who knows or has reason to know that he or she received
17 a contribution or contributions within the preceding 12 months
18 from a party or his or her agent, or from any participant or his or
19 her agent, shall disclose that fact on the record of the proceeding.

20 (c) (1) A member shall not make, participate in making, or in
21 any way attempt to use his or her official position to influence, the
22 decision in any adjudicatory proceeding pending before the board
23 if the member knows or has reason to know that he or she received
24 a contribution or contributions within the preceding 12 months
25 from a party or his or her agent, or from any participant or his or
26 her agent, and if the member knows or has reason to know that the
27 participant has a financial interest in the decision, as that term is
28 used in Article 1 (commencing with Section 87100) of Chapter 7
29 of Title 9.

30 (2) A member shall not request or suggest a contribution or
31 contributions from a party or his or her agent, or from any
32 participant or his or her agent, within the 12-month period
33 subsequent to a decision in the adjudicatory proceeding before the
34 board in which the party or participant is involved. For purposes
35 of this paragraph, "suggest" means to mention or imply as a
36 possibility or put forward for consideration. *This paragraph shall*
37 *apply to a member only with respect to an adjudicatory proceeding*
38 *in which that member made, participated in making, or in any way*
39 *attempted to use his or her official position to influence the*
40 *decision.*

(3) In addition to paragraph (2), a member shall not accept a contribution or contributions from a party or his or her agent, or from any participant or his or her agent, within the 12-month period subsequent to a decision in the adjudicatory proceeding before the board in which the party or participant is involved. *This paragraph shall apply to a member only with respect to an adjudicatory proceeding in which that member made, participated in making, or in any way attempted to use his or her official position to influence the decision.*

(d) (1) Notwithstanding *paragraph (1) of subdivision (c)*, ~~if a member receives a contribution which would otherwise require a contribution shall not be deemed received by a member for the purposes of disqualification under subdivision (c), and he or she if the member~~ returns the contribution within 30 days from the time he or she knows, or has reason to know, about the contribution and the adjudicatory proceeding pending before the board, ~~his or her participation in the proceeding shall be deemed lawful.~~ *board.*

(2) Notwithstanding paragraph (3) of subdivision (c), if a member receives a contribution within the 12-month period subsequent to a decision in the adjudicatory proceeding before the board from a party, participant, or agent ~~and he or she~~ *the member* returns the contribution within 30 days from the time he or she knows, or has reason to know, about the contribution and the decision in the adjudicatory proceeding pending before the board, ~~his or her acceptance of the contribution shall be deemed lawful.~~ *the member shall be deemed not to have accepted the contribution.*

(e) (1) A party to, or a participant in, an adjudicatory proceeding pending before the board shall disclose on the record of the proceeding any contribution or contributions made within the preceding 12 months by the party or participant, or his or her agent, to any member of the board. The board shall make the disclosure publicly available on its Internet Web site.

(2) A party to, or a participant in, an adjudicatory proceeding before the board that makes a contribution to a member of the board within the 12 months subsequent to a decision in the adjudicatory proceeding in which the party or agent was ~~involved~~ *involved, and in which the member made, participated in making, or in any way attempted to use his or her official position to influence the decision,* shall disclose that contribution to the board within 30 days of making the contribution. The board shall make

1 the disclosure publicly available on its Internet Web site as
2 promptly as feasible.

3 (f) When a close corporation is a party to, or a participant in,
4 an adjudicatory proceeding pending before the board, the majority
5 shareholder is subject to the disclosure requirement specified in
6 this section.

7 (g) For purposes of this section, if a deputy to the Controller
8 sits at a meeting of the board and votes on behalf of the Controller,
9 the deputy shall disclose contributions made to the Controller and
10 shall disqualify himself or herself from voting pursuant to the
11 requirements of this section.

12 (h) For purposes of this section:

13 (1) "Contribution" has the same meaning as prescribed in
14 Section 82015 and the regulations adopted pursuant to that section,
15 except that "contribution" shall also include a payment or payments
16 made at the behest of a member of the board principally for
17 legislative, governmental, or charitable purposes when that
18 payment is or those payments are at least five thousand dollars
19 (\$5,000) in the aggregate and is or are made by a party or his or
20 her agent or a participant or his or her agent.

21 (2) "At the behest of a member of the board" means made under
22 the control or at the direction of, in cooperation, consultation,
23 coordination, or concert with, at the request or suggestion of, or
24 with the express prior consent of a member of the board.

25 (3) "Party" means any person who is the subject of an
26 adjudicatory proceeding pending before the board.

27 (4) "Participant" means any person who is not a party but who
28 actively supports or opposes a particular decision in an adjudicatory
29 proceeding pending before the board and who has a financial
30 interest in the decision, as described in Article 1 (commencing
31 with Section 87100) of Chapter 7 of Title 9. A person actively
32 supports or opposes a particular decision if he or she lobbies in
33 person the members or employees of the board, testifies in person
34 before the board, or otherwise acts to influence the members of
35 the board.

36 (5) "Agent" means any person who represents a party to or
37 participant in an adjudicatory proceeding pending before the board.
38 If a person acting as an agent is also acting as an employee or
39 member of a law, accounting, consulting, or other firm, or a similar

1 entity or corporation, both the entity or corporation and the person
2 are agents.

3 (6) "Adjudicatory proceeding pending before the board" means
4 a matter for adjudication that has been scheduled and appears as
5 an item on a meeting notice of the board as required by Section
6 11125 as a contested matter for administrative hearing before the
7 board members. A consent calendar matter is not included unless
8 the matter has previously appeared on the calendar as a nonconsent
9 item, or has been removed from the consent calendar for separate
10 discussion and vote, or the item is one about which the member
11 has previously contacted the staff or a party.

12 (7) A member knows or has reason to know about a contribution
13 if, after the adjudicatory proceeding first appears on a meeting
14 notice of the board, facts have been brought to the member's
15 personal attention that he or she has received a contribution which
16 would require disqualification under subdivision (c), or that the
17 member received written notice from the board staff, before
18 commencement of the hearing and before any subsequent decision
19 on the matter, that a specific party, close corporation, or majority
20 shareholder, or agent thereof, or any participant having a financial
21 interest in the matter, or agent thereof, in a specific, named
22 adjudicatory proceeding before the board, made a contribution or
23 contributions within the preceding 12 months. Each member shall
24 provide board staff with a copy of each of his or her campaign
25 statements at the time each of those statements is filed.

26 The notice of contribution shall be on a form prescribed under
27 rules adopted by the board to provide for staff inquiry of each
28 party, participant, close corporation, and its majority shareholder,
29 and any agent thereof, to determine whether any contribution has
30 been made to a member, and if so, in what aggregate amount and
31 on what date or dates within the 12 months preceding an
32 adjudicatory proceeding or decision.

33 In addition, the staff shall inquire and report on the record as
34 follows:

35 (A) Whether any party or participant is a close corporation, and
36 if so, the name of its majority shareholder.

37 (B) Whether any agent is an employee or member of any law,
38 accounting, consulting, or other firm, or similar entity or
39 corporation, and if so, its name and address and whether a

1 contribution has been made by any such person, firm, corporation,
2 or entity.

3 (i) (1) Any person who knowingly or willfully violates any
4 provision of this section is guilty of a misdemeanor.

5 (2) No person convicted of a misdemeanor under this section
6 shall be a candidate for any elective office or act as a lobbyist for
7 a period of four years following the time for filing a notice of
8 appeal has expired, or all possibility of direct attack in the courts
9 of this state has been finally exhausted, unless the court at the time
10 of sentencing specifically determines that this provision shall not
11 be applicable. A plea of nolo contendere shall be deemed a
12 conviction for the purposes of this section.

13 (3) In addition to other penalties provided by law, a fine of up
14 to the greater of ten thousand dollars (\$10,000), or three times the
15 amount the person failed to disclose or report properly, may be
16 imposed upon conviction for each violation.

17 (4) Prosecution for violation of this section shall be commenced
18 within four years after the date on which the violation occurred.

19 (5) This section shall not prevent any member of the board from
20 making, or participating in making, a governmental decision to
21 the extent that the member's participation is legally required for
22 the action or decision to be made. However, the fact that a
23 member's vote is needed to break a tie does not make the member's
24 participation legally required.

25 SEC. 3. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.